hardship to the vendor arises from the initial mistake of refusing a foreclosure by sale.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION — EFFECT ON PRIVILEGE OF AN UNACCEPTED PARDON. — A witness before the federal grand jury refused to answer certain questions upon the ground that it would tend to incriminate him. He was handed a pardon from the President of the United States granting full and unconditional pardon for all offences which he had or might have committed in connection with any matter to which he might testify. He refused to accept the pardon or answer the questions. He was then adjudged guilty of contempt. *Held*, that this judgment be reversed. *Burdick* v. *United States*, 236 U. S. 79, 35 Sup. Ct. 267.

For a discussion of the effect of an unaccepted pardon upon the privilege against self-incrimination, see NOTES, p. 609.

BOOK REVIEWS

THE ANTI-TRUST ACT AND THE SUPREME COURT. By William H. Taft. New York: Harper and Brothers. 1914. pp. 133.

The law of restraint of trade and monopoly is founded on public policy. The rules of public policy vary of necessity according to conditions prevailing in different countries and in different periods. The English courts, while declaring that all restraints upon trade are illegal unless reasonable, yet have sanctioned a large measure of freedom of contract between buyer and seller. A liberal test of reasonableness was therefore adopted, and whether by reason of the general acceptance of this policy or of different economic conditions, the higher English courts have not until very recently passed upon the validity of the modern combination to regulate prices, and have not yet declared any such illegal. In contrast with the comparatively simple rules of the English common law to determine the legality of the covenant of the seller of a business or of a partner or employee not to reëngage in business and the simple undoing of such contracts by the refusal of the courts to enforce them, are the decisions of our state and federal courts holding that combinations which have acquired power to regulate prices, restrict output and divide territory, or otherwise unduly restrict competition, are illegal; and under power, usually aided by statute, to grant affirmative relief, ordering their dissolution and the restoration of competitive conditions. The American courts, while starting with the rules of the English common law, have developed a body of law of distinctly American origin based upon a public policy of furthering competition, in which the decisions of the Supreme Court of the United States recognizing, as it were, a national policy, have become of great, if not controlling, importance.

It is this body of law, involved in conflicting economic theories, opposing views of public policy and grave issues of constitutional power, yet so vitally affecting the people of the nation, to which the author addresses this book. As its title indicates, Mr. Taft's book is an exposition of the decisions of the Supreme Court interpreting the Sherman Anti-Trust Law. It is a series of legal essays, beginning with a brief but intelligible outline of the common law beginnings and the constitutional background of the statute, and explaining the effect of each of the major decisions and justifying the principles ultimately established by the court. To a lawyer desiring to ascertain the present status of the law, after a period of rulings by divided courts and some undoubted changes of view, it is a presentation of breadth and candor and accuracy. The author's choice of a publisher indicates that the book is also intended for the

general reader. It reveals in an enlightening and authoritative manner what the Sherman Act and the courts have accomplished in formulating the law and in practical results. Seldom has public opinion been so universally concerned in the progress of the law as in the legal regulation of the trusts, and the writing of this book at the present time is a distinct public service.

In the period closed by the *Standard Oil* (221 U. S. 1) and the *Tobacco Trust* (221 U. S. 106) *Cases*, two principal questions stand out: one, an issue of constitutional power raised by the application of the statute to a combination of manufacturing companies selling their product in interstate commerce; the other, a problem of interpretation, whether the Sherman Act prohibits all contracts or combinations in restraint of interstate commerce, including those or some of those held reasonable and legal at common law.

The first question arose in the much-discussed *Knight Case* (155 U. S. 1). That case was where a holding company had acquired the stock of manufacturing corporations owning plants in different states and producing practically the entire output of refined sugar in the United States. It was decided that such a combination, while amounting to a monopoly of manufacture, did not show a monopoly of interstate commerce. This decision was reached although it was freely conceded that in the regular course of business the products did enter interstate commerce and could only be disposed of therein. Mr. Taft analyses the *Knight Case* and considers the effect of the subsequent decisions. He concludes that the dissenting opinion of Mr. Justice Harlan represents more accurately the present view of the court (p. 58) and suggests that if the *Sugar Trust Case* were again brought before it, a different result would be reached (p. 83). The author finds the error in the court's refusal to infer that the necessary effect of the union of the refineries was to monopolize interstate commerce (p. 83). The soundness of these criticisms will be conceded and is established by subsequent rulings culminating in the Standard Oil decisions, in which elaborate arguments founded upon the *Knight Case* were declared foreclosed by prior decisions (221 U. S. 68). It is further submitted that the drawing of such inference was really prevented by the constitutional view which the court took of the case. The majority opinion is based upon two propositions: one, the distinction made between manufacture and commerce, and the assertion that the combination operated on the former only; the other, that the regulation of manufacture and the acquisition and ownership of properties used for manufacture within the state was a matter within the reserved powers of the states, and consequently affected interstate commerce not directly but only incidentally, and therefore did not fall within the scope of the federal commerce clause.

Support for the first position was drawn from the analogy of decisions concerning the power of the state to prohibit manufacture or tax certain articles before they entered interstate commerce. From these the court reasoned that the mere intent of the manufacturer to export products, which intent might be changed, did not make them subjects of interstate commerce. This reasoning, while true enough in the abstract and of manufacture in ordinary instances, was inapplicable to the situation in the *Knight Case*. There the greater portion of the output could not be marketed except through the channels of interstate commerce. There was a continuous current of commerce between the refineries and the markets in other states. Control of the refineries gave control of the markets and the exact point at which the products entered interstate commerce would seem unimportant. The opinion in truth treated manufacture and commerce as abstractions, rather than from the practical standpoint adopted in later decisions under the Sherman Act. The second proposition was rejected in the *Northern Securities* (193 U. S. 327) and *Standard Oil* (221 U. S. 78) *Cases*. The *Knight Case* regarded the ownership by a holding company of stocks of corporations owning plants within the states as a matter

reserved for regulation by the states and constitutionally protected from federal interference, and therefore held proof of other restraint upon interstate commerce than resulted therefrom to be necessary. The later cases decide that the holding company, when used as a method of restraining interstate commerce, is not so protected; and as its existence confers power to restrain, dissolution may be ordered to prevent continued violations of the act.

Discussing the question whether the statute embraces contracts legal at common law, Mr. Taft defends the construction adopted in the *Standard Oil Case*. Following the classification made in his noteworthy opinion in the *Addyston Pipe Case* (85 Fed. 271), he enumerates the restraints held reasonable at common law and points out that the opinion in the *Joint Traffic Association Case* (171 U. S. 505) expressly excluded all these from the operation of the statute (p. 63). The combinations involved in the *Joint Traffic Association* and *Northern Securities* cases, he asserts, would have been held unreasonable at common law (pp. 68, 76). This statement, we suggest, is to be read as meaning the common law adopted in this country. When the Sherman Act was passed, there was a considerable body of law against the legality of combinations to regulate prices or restrain competition, developed by state courts in the Standard Oil, Sugar Trust, Whiskey Trust, and kindred litigation.

The same test of reasonableness has not, however, been accepted in England. As early as *Hare* v. *London & Northwestern Ry. Co.* (2 Johns. & Hen. 80, 103), an agreement between competing railway companies to divide traffic was upheld, because "it is a mistaken notion, that the public is benefited by pitting two railway companies against each other until one is ruined." *Urmston* v. *Whitelegg* (63 L. T. N. S. 455), cited by the author in his opinion in the *Addyston Pipe Case* as holding illegal an agreement of dealers to maintain prices, was affirmed in the Court of Appeals on the ground that the agreement was unreasonable as to both time and area (55 J. P. 453); and was explained and a contract to keep up prices upheld in *Cade* v. *Daly* (1910, 1 Ir. R. 306). The *Hare Case* received little attention, and it was not until after the Standard Oil decision that the law was definitely declared in England. In the case of *Attorney General* v. *Adelaide Steamship Co.* (1913, A. C. 781), the House of Lords held a very complete system of contracts between owners of coal mines and carriers who sold the coal, restricting and apportioning the output and fixing prices, not "to the detriment of the public" within the meaning of the Australian statute. An arrangement of manufacturers of salt involving these elements, and in addition, a system of restrictive contracts, was held valid at common law and enforceable as between the parties, in the absence of proof that the prices fixed were unreasonable, in *Northwestern Salt Co.* v. *Electrolytic Salt Co.* (1914, A. C. 461). These two decisions seem to settle the rule in England that contracts or the possession of power to regulate prices or restrain competition among the parties, though accompanied by division of territory and restriction of output, are not *per se* unlawful; but that to show illegal restraint of trade there must be proof that (1) trade has been actually restrained, and (2) unreasonable prices have resulted. H. F. S.

LEADING CASES IN CANADIAN CONSTITUTIONAL LAW. By A. H. F. Lefroy, K.C. Toronto: The Carswell Company. 1914. pp. xxi, 112.

Here are presented abstracts of thirty-one cases dealing with the British North America Act, 1867. Almost all were decided in the Judicial Committee of the Privy Council. Extracts from the opinions are given when necessary. Yet the greater part of almost every abstract is in the words of the author; and the author has included with his abstract of each case such comments as